

## Johannes, Tristan

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**From:** Ramthun, Timothy  
**Sent:** Wednesday, November 24, 2021 12:47 PM  
**To:** Rep.Ramthun  
**Subject:** Fwd: Re: WI Legis Counsel memo

----- Forwarded message -----

From: Boris Epshteyn <bepshteyn@gmail.com>  
Date: Nov 24, 2021 8:12 AM  
Subject: Re: WI Legis Counsel memo  
To: "Ramthun, Timothy" <Timothy.Ramthun@legis.wisconsin.gov>  
Cc:

See below.

- The fundamental flaw in the legislative counsel analysis is the claim that “There is no procedure under Wisconsin law for “decertifying” or “pulling back” a slate of presidential electors *who have been appointed pursuant to state statutes.*” (emphasis added). The whole basis for the current effort is the fact that the 2020 election was not in fact conducted pursuant to state statutes.
- Article II of the Constitution gives plenary power to the legislatures to determine the manner for choosing electors, which the Wisconsin legislature has done by adopting election statutes. When non-legislative officials altered or suspended those laws, they acted in violation of Article II of the Constitution, resulting in an illegal election.
- 3 U.S.C. § 2 provides that when a state fails to choose electors on the day designated by Congress, then “the electors may be appointed on a subsequent day in such a manner as the legislature of such State may direct.” Some have argued that that provision only applies in the context of a state requiring a majority vote to win, and therefore allows for the possibility of a runoff. I do not think it is so limited by its terms, and that the conduct of an election held in violation of the manner set out by the legislature would trigger that provision.
- Beyond that, we’re in uncharted territory. A plausible argument can be made that once the electoral college acts, that is the end of the matter. But another argument, at least as plausible, is a recognition that fraud (and on that, I would include unconstitutional conduct by state election officials) vitiates actions taken pursuant to the fraud. That would suggest that decertifying votes that were illegally certified would be valid.
- As for whether a President can *only* be removed by impeachment or incapacity, those are the only two routes specified in the Constitution. But because the Constitution does not describe them as the *sole* mechanisms, they do not foreclose traditional fraud remedies. The assumption here is that fraud and illegality occurred to an extent great enough to definitively have altered the results of the election. If we presume it occurred without Biden’s knowledge, there is no “high crime and misdemeanor” *by him* that would warrant impeachment. And neither does this issue have anything to do with his competence under the 25<sup>th</sup> Amendment. But that should not foreclose normal fraud remedies that were available at common law and therefore serve as a backdrop principle for constitutional

interpretation. The simple fact is that the Constitution doesn't address the present circumstanced—again, unchartered territory.

On Sun, Nov 21, 2021 at 11:16 PM Timothy Ramthun <[ramthun@hotmail.com](mailto:ramthun@hotmail.com)> wrote:

Please see attached, as requested...

Rep. Timothy Ramthun (WI-59th)

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